

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE COMMISSIONER OF COMMERCE

In the Matter of the License Denial of  
Gary P. Meyer, d/b/a Gary Meyer  
Construction.

FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION

The above-entitled matter came on for a prehearing conference before Administrative Law Judge George A. Beck commencing at 9:30 a.m. on April 7, 2004, at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401-2138.

Francis Green III, Assistant Attorney General, 445 Minnesota Street, Suite 900, St. Paul, MN 55101-2127, appeared on behalf of the Minnesota Department of Commerce ("Department"). Respondent did not appear at the prehearing conference. The record closed on April 7, 2004, upon Respondent's default.

**NOTICE**

This Report is a recommendation, not a final decision. The Commissioner of the Department of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Kevin Murphy, Deputy Commissioner, Minnesota Department of Commerce, 85 Seventh Place E., Suite 500, St. Paul, MN 55101 to ascertain the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

**STATEMENT OF ISSUE**

The issue in this case is whether or not the denial of the licensure to Gary P. Meyer as a residential building contractor should be affirmed.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. On March 2, 2004, a Notice of and Order for Hearing and Notice of Prehearing Conference in the above matter were served on Respondent via U.S. Mail at 1541 13 ½ Street South, Fargo, ND 58103.

2. The Notice of and Order for Hearing and Notice of Prehearing Conference served on Respondent contained the following statements:

**Respondent's failure to appear at the prehearing conference may result in a finding that the Respondent is in default, that the Department of Commerce's allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld.**

**If any party has good cause for requesting a delay of the prehearing conference, the request must be made in writing to the Administrative Law Judge at least five days prior to the prehearing conference. A copy of the request must be served on the other party.**

**Any party intending to appear at the prehearing conference must file a Notice of Appearance form and return it to the Administrative Law Judge within 20 days of the date of service of this Notice and Order. A copy must be served on the Department's attorney. A Notice of Appearance form is enclosed.**

3. Respondent did not appear at the April 7, 2004 prehearing conference, made no prehearing request for a continuance, and did not file a Notice of Appearance.

4. The allegations of the Notice of and Order for Hearing and Notice of Prehearing Conference are deemed proved and incorporated into these Findings by reference.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Minnesota Commissioner of Commerce and the Administrative Law Judge have subject matter jurisdiction herein pursuant to Minn. Stat. § § 45.027, 326.91, and 14.50.

2. Respondent was given timely and proper notice of the hearing in this matter.

3. The Department has complied with all relevant and substantial and procedural requirements of statute and rule.

4. Under Minn. Rule 1400.6000, Respondent is in default as a result of his failure to appear at the scheduled prehearing conference.

5. Under Minn. Rule 1400.6000, the allegations and the issues set out in the Notice of and Order for Hearing and Notice of Prehearing Conference may be taken as true or deemed proved when a party defaults.

6. Based upon the facts set out in the Notice of and Order for Hearing and Notice of Prehearing Conference, Respondent has violated Minn. Stat. § § 45.027, subd. 7(4) and 326.91, subd. 1(2).

7. An order is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED: that the Department's denial of a license to Gary P. Meyer, d/b/a Meyer Construction, be AFFIRMED.

Dated this 13<sup>th</sup> day of April 2004.

S/ George A. Beck

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GEORGE A. BECK

Administrative Law Judge

Reported: Default

### **NOTICE**

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.